

August 2004

MJI Publication Updates, Part 1

Adoption Proceedings Benchbook

**Child Protective Proceedings Benchbook
(Revised Edition)**

Crime Victim Rights Manual

**Criminal Procedure Monograph 2—Issuance of
Search Warrants (Revised Edition)**

**Criminal Procedure Monograph 3—Misdemeanor
Arraignments & Pleas (Revised Edition)**

**Criminal Procedure Monograph 4—Felony
Arraignments in District Court (Revised Edition)**

**Criminal Procedure Monograph 5—Preliminary
Examinations (Revised Edition)**

Update: Adoption Proceedings Benchbook

CHAPTER 10

Paying the Costs of Foster Care and Adoption

10.5 Adoption Subsidies

A. Support Subsidies

Effective July 8, 2004, MCL 400.115f* was amended. Although the definition of “support subsidy” did not change, a new subsection was added to MCL 400.115f that changes the citation for the definition of “support subsidy.” In the first paragraph on page 281, change the citation for the definition of a “support subsidy” to MCL 400.115f(v).

*See 2004 PA 193.

1. Requirements

Effective July 8, 2004, MCL 400.115g* was amended to change the requirements for the FIA certification of an adoptee for subsidies. MCL 400.115g(1)(a) no longer requires the FIA to certify that the adoptive parent has requested a support subsidy or that the adoptee is in foster care at the time the FIA certifies the support subsidy. Therefore, on page 281, replace the quote of MCL 400.115g(1) with the following text:

*See 2004 PA 193.

“(1) The [FIA] may pay a support subsidy to an adoptive parent of an adoptee who is placed in the home of the adoptive parent under the adoption code or under the adoption laws of another state or a tribal government, if all of the following requirements are met:

“(a) The [FIA] has certified that the adoptee is a child with special needs.

“(b) Certification is made before the adoptee’s eighteenth birthday.

“(c) Certification is made before the petition for adoption is filed.

“(d) The adoptive parent requests the support subsidy not later than the date of confirmation of the adoption.”

*Effective July 8, 2004.

2004 PA 193* amended the definition of “child with special needs” in MCL 400.115f(h). Previously, MCL 400.115f(h)(i) required the state to make several determinations. MCL 400.115f(h)(i) now requires a specific judicial finding that the child cannot or should not be returned to the home of the child’s parents. Near the bottom of page 281 and continuing on the top of 282, replace the quote of MCL 400.115f(h)(i)–(iii) with the following quote:

“(i) There is a specific judicial finding that the child cannot or should not be returned to the home of the child’s parents.

“(ii) A specific factor or condition, or a combination of factors and conditions, exists with respect to the child so that it is reasonable to conclude that the child cannot be placed with an adoptive parent without providing adoption assistance under this act. The factors or conditions to be considered may include ethnic or family background, age, membership in a minority or sibling group, medical condition, physical, mental, or emotional disability, or length of time the child has been waiting for an adoptive home.

“(iii) A reasonable but unsuccessful effort was made to place the adoptee with an appropriate adoptive parent without providing adoption assistance under this act or a prospective placement is the only placement in the best interest of the child.”

2004 PA 193 eliminated the requirement in MCL 400.115g(1)(a)(iii) that the FIA certify that the adoptee was in foster care at the time the FIA certified the support subsidy. Therefore, delete the first full paragraph before the “**Note**” on page 282.

CHAPTER 10

Paying the Costs of Foster Care and Adoption

10.5 Adoption Subsidies

C. Nonrecurring Adoption Expenses

2004 PA 193* amended the definition of “child with special needs” in MCL 400.115f(h). Previously, MCL 400.115f(h)(i) required the state to make several determinations. MCL 400.115f(h)(i) now requires a specific judicial finding that the child cannot or should not be returned to the home of the child’s parents. On page 287, replace the quote of MCL 400.115f(h)(i)–(iii) with the following quote:

*Effective July 8, 2004.

“(i) There is a specific judicial finding that the child cannot or should not be returned to the home of the child’s parents.

“(ii) A specific factor or condition, or a combination of factors and conditions, exists with respect to the child so that it is reasonable to conclude that the child cannot be placed with an adoptive parent without providing adoption assistance under this act. The factors or conditions to be considered may include ethnic or family background, age, membership in a minority or sibling group, medical condition, physical, mental, or emotional disability, or length of time the child has been waiting for an adoptive home.

“(iii) A reasonable but unsuccessful effort was made to place the adoptee with an appropriate adoptive parent without providing adoption assistance under this act or a prospective placement is the only placement in the best interest of the child.”

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.7 Investigation and Referral Requirements

Insert the following text at the top of page 30, immediately after the first paragraph:

When the FIA interviews a person concerning alleged abuse or neglect, the FIA is required to provide that person with specific information. MCL 722.628(2),* in relevant part, states:

“In the course of an investigation, at the time that a department investigator contacts an individual about whom a report has been made under this act or contacts an individual responsible for the health or welfare of a child about whom a report has been made under this act, the department investigator shall advise that individual of the department investigator’s name, whom the department investigator represents, and the specific complaints or allegations made against the individual. The department shall ensure that its policies, procedures, and administrative rules ensure compliance with the provisions of this act.”

*Effective July 8, 2004. See 2004 PA 195.

CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.15 Constitutional Requirements for Reporting and Investigating Suspected Child Abuse or Neglect

B. Investigating Suspected Child Abuse or Neglect

Near the top of page 38 before the paragraph beginning “*Miranda warnings*, ” insert the following text:

MCL 722.628(17)* requires that all FIA employees involved in investigating child abuse or neglect cases be trained in “the legal duties to protect the state and federal constitutional and statutory rights of children and families from the initial contact of an investigation through the time services are provided.”

*Effective July 8, 2004, 2004 PA 195.

CHAPTER 11

Common Evidentiary Issues in Child Protective Proceedings

11.11 Expert Testimony in Child Protective Proceedings

Insert the following text near the middle of page 290, before the paragraph beginning “MRE 703”:

The Michigan Supreme Court in *Gilbert v DaimlerChrysler Corp*, ___ Mich ___, ___ (2004), reiterated the trial court’s gatekeeper responsibility in the admission of expert testimony under amended MRE 702. The Court stated:

“MRE 702 has [] been amended explicitly to incorporate *Daubert*’s* standards of reliability. But this modification of MRE 702 changes only the factors that a court may consider in determining whether expert opinion evidence is admissible. It has not altered the court’s fundamental duty of ensuring that *all* expert opinion testimony—regardless of whether the testimony is based on ‘novel’⁵² science—is reliable.

**Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 US 579 (1993).

⁵² See, e.g., *People v Young*, 418 Mich 1, 24; 340 NW2d 805 (1983). Because the court’s gatekeeper role is mandated by MRE 702, rather than *Davis-Frye*, the question whether *Davis-Frye* is applicable to evidence that is not ‘novel’ has no bearing on whether the court’s gatekeeper responsibilities extend to such evidence. These responsibilities are mandated by MRE 702 irrespective of whether proffered evidence is ‘novel.’ . . .”

Gilbert, supra at ____.

The Court also indicated that the trial court must focus its MRE 702 inquiry on the data underlying the expert opinion and must evaluate the extent to which the expert extrapolates from that data in a manner consistent with *Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 US 579 (1993). *Gilbert, supra* at ____.

CHAPTER 14

Paying the Costs of Child Protective Proceedings

14.1 Federal, State, and County Sources of Funding

Federal foster care maintenance payments under Title IV-E.

Insert the following text near the middle of page 333 before the boldface text beginning “**Except as otherwise provided by law . . .**”:

*See 2004 PA
193.

Effective July 8, 2004, MCL 400.115b* was amended to provide that if the FIA is making state or federally funded foster care maintenance payments for a child that is either under the supervision of the FIA or has been committed to the FIA, all rights to current, past due, and future child support are assigned to the FIA while the child is receiving or benefiting from those payments. MCL 400.115b(5)–(6) state:

“(5) All rights to current, past due, and future support payable on behalf of a child committed to or under the supervision of the [FIA] and for whom the [FIA] is making state or federally funded foster care maintenance payments are assigned to the [FIA] while the child is receiving or benefiting from those payments. When the [FIA] ceases making foster care maintenance payments for the child, both of the following apply:

“(a) Past due support that accrued under the assignment remains assigned to the [FIA].

“(b) The assignment of current and future support rights to the [FIA] ceases.

“(6) The maximum amount of support the [FIA] may retain to reimburse the state, the federal government, or both for the cost of care shall not exceed the amount of foster care maintenance payments made from state or federal money, or both.”

Update: Crime Victim Rights Manual

CHAPTER 10

Restitution

10.9 Calculating Restitution Where the Offense Results in Physical or Psychological Injury, Serious Bodily Impairment, or Death

C. Triple Restitution for Serious Bodily Impairment or Death of a Victim

Replace the July 2003 update to page 245 and the two paragraphs immediately following the quoted list near the top of page 245 with the following case summary:

According to the Michigan Court of Appeals in *People v Thomas*, ___ Mich App ___, ___ (2004), the phrase “serious impairment of a body function” as it is defined in the no-fault act, MCL 500.3135(1), is not relevant to a court’s analysis of an injury resulting from a defendant’s violation of MCL 750.81d(3)—resisting arrest and causing the police officer serious bodily impairment. The no-fault act’s definition of the phrase and case law based on that interpretation are not applicable to circumstances like those in *Thomas* because MCL 750.81d(7)(c) expressly provides that “serious impairment of a body function” is to be defined as the phrase is defined in MCL 257.58c. *Thomas, supra*, ___ Mich App at ___.

The definition of “serious impairment of a body function” in MCL 257.58c is substantially similar to the definitions of this term in the provisions of the CVRA authorizing triple restitution for victims who sustain a serious bodily impairment as a result of an offender’s criminal conduct. See MCL 780.766(5), 780.794(5), and 780.826(5). In *Thomas*, the Court of Appeals rejected both parties’ assertion that the no-fault statute should be considered “in pari materia” with the definition in MCL 257.58c. The *Thomas* Court explained that the doctrine of “in pari materia” was inapplicable because

“[t]he two statutes [MCL 257.58c and 500.3135(1)] do not relate to the same subject or share a common purpose. The no-fault act provides a system of civil compensation and liability for automobile accidents; the statute at issue [in *Thomas*] prohibits and criminalizes assaultive behavior while resisting an arrest.”
Thomas, supra, ___ Mich App at ___.

The Court also noted that a court may not look outside the statute at issue when, as in *Thomas*, the definitions of terms relevant to the dispute are provided in the statute itself. Thus, in *Thomas*, it was improper to consider the no-fault act’s definition of “serious impairment of a body function” because MCL 750.81d(7) provided the definition of the phrase by direct reference to MCL 257.58c. Similarly, the statutory provisions governing triple restitution in cases involving serious bodily impairment under the CVRA contain a definition of the phrase so that reference to the no-fault act’s definition is improper.

Because the definition of “serious bodily impairment” used in MCL 750.81d(7)—the phrase as defined in MCL 257.58c—is substantially similar to the definitions used throughout the CVRA, the *Thomas* Court’s disposition of the issue is relevant to cases under the CVRA involving the interpretation of “serious bodily impairment.” The CVRA’s definitions of the phrase are prefaced with “serious impairment of a body function includes, but is not limited to” the specific list of injuries included in the definitions. According to the *Thomas* Court:

“[T]o determine whether injuries to the officer here constitute serious impairments of a body function under the statute, we consider their similarity to injuries within the statutory list.”
Thomas, supra, ___ Mich App at ___.

The same analysis applies to a determination of serious bodily impairment under the triple restitution provisions of the CVRA.

August 2004

Update: Criminal Procedure Monograph 2—Issuance of Search Warrants (Revised Edition)

Part A — Commentary

2.2 Initiating the Search Warrant Process

C. Neutral and Detached Magistrate

Insert the following case summary before Section 2.3 at the top of page 4:

An individual who is “employed by and work[s] for a law enforcement agency” is not a “neutral and detached magistrate” qualified to issue warrants under the Fourth Amendment to the United States Constitution. *United States v Parker*, ___ F3d ___ (CA 6, 2004). In *Parker*, the Sixth Circuit Court of Appeals agreed with the district court’s conclusion that despite her “administrative assistant-like” job responsibilities, an individual who worked at a county detention facility under the job title of “chief lieutenant deputy jailer” was engaged in law enforcement to an extent that prohibited her from acting as the county’s trial commissioner, a position from which search and arrest warrants issued.

2.13 The Exclusionary Rule and Good Faith Exception

Add the following text to the July 2003 update to page 25:

The Michigan Supreme Court adopted the “good-faith” exception to the exclusionary rule in *People v Goldston*, ___ Mich ___ (2004). The “good-faith” exception was first announced by the United States Supreme Court in *United States v Leon*, 468 US 897 (1984), as a remedy for automatic exclusion of evidence obtained from a law enforcement officer’s reasonable, good-faith reliance on a search warrant later found to be defective. According to the *Goldston* Court:

“The purpose of the exclusionary rule is to deter police misconduct. That purpose would not be furthered by excluding evidence that the police recovered in objective, good-faith reliance on a search warrant.” *Goldston, supra*, ___ Mich at ___.

The Sixth Circuit Court of Appeals concluded that the “good-faith” exception to the exclusionary rule is inapplicable to the proceeds of a search warrant that was never valid. *United States v Parker*, ___ F3d ___ (CA 6, 2004).

According to the Sixth Circuit:

“In [*United States v*] *Leon*[, 468 US 897 (1984)], the Supreme Court carved out a good-faith exception to the exclusionary rule when officers act in reasonable reliance on a search warrant issued by a neutral and detached magistrate that is subsequently found to be invalid. . . . *Leon* is inapplicable when a warrant is signed by an individual lacking the legal authority necessary to issue warrants. *United States v Scott*, 260 F.3d 512 (6th Cir. 2001). [T]he Supreme Court, in carving out a good-faith exception in *Leon*, ‘presupposed that the warrant was issued by a magistrate or judge clothed in the proper authority.’ *Id.* at 515. The *Scott* court held that a search warrant issued by an individual who is not neutral and detached is void *ab initio*. *Id.* at 515.” *Parker, supra*, ___ F3d at ___.

Update: Criminal Procedure Monograph 3—Misdemeanor Arraignments & Pleas (Revised Edition)

Part A—Commentary on Misdemeanor Arraignments

3.12 Waiver of the Right to Counsel

Replace the last two paragraphs near the bottom of page 20 and the quoted text beginning on page 20 and continuing to the top of page 21 with the following case summary:

A defendant's refusal to cooperate with his appointed counsel and his unequivocal request to be provided with a different defense attorney at trial does not constitute a waiver of counsel or operate as the defendant's request to proceed in propria persona where the record shows that "[the] defendant clearly and unequivocally declined self-representation." *People v Russell*, ___ Mich ___, ___ (2004).

In *Russell*, the defendant informed the trial court at the beginning of trial that he wanted the trial court to appoint a substitute for the defendant's *second* court-appointed attorney. The court refused to appoint different counsel unless the defendant offered "some valid reason" other than "personality difficulties" to justify the appointment of a third defense attorney. The defendant failed to provide any such explanation, and the court explained to the defendant his options: (1) the defendant could retain the counsel of his choice; (2) the defendant could continue with the present attorney's representation; (3) the defendant could represent himself without any legal assistance; or (4) the defendant could represent himself with the assistance of his present attorney. The defendant continued to express his dissatisfaction with his present attorney's defense at the same time that he clearly indicated that he did not wish to conduct his own defense, that he "needed" to be provided with "competent counsel." *Russell, supra*, ___ Mich at ___.

The *Russell* Court reaffirmed the "requirements regarding the judicial inquest necessary to effectuate a valid waiver and permit a defendant to represent himself" as set forth in *Faretta v California*, 422 US 806 (1975), and first

adopted by the Michigan Supreme Court in *People v Anderson*, 398 Mich 361 (1976). *Russell, supra*, ___ Mich at ___ n 22. Applying those requirements to the facts in *Russell*, the Court concluded:

“In this case, a review of the record indicates two key facts: first, that defendant expressly rejected self-representation and, second, that defendant never voluntarily waived his Sixth Amendment right to the assistance of counsel at trial. Indeed, defendant clearly sought appointment of *another* trial counsel, and defendant and the trial court engaged in a lengthy dialogue over defendant’s desire to have substitute counsel appointed.

“While defendant was given clear choices, defendant consistently denied that *his* choice was self-representation. Throughout his colloquy with the trial court, defendant steadfastly rejected the option of proceeding to trial without the assistance of counsel. Therefore, it cannot be said, as the Court of Appeals and dissenting opinions maintain, that defendant *unequivocally* chose self-representation and voluntarily waived his Sixth Amendment right to counsel.

“We believe that defendant’s repudiation of self-representation was unmistakable in this case. However, to the degree that defendant’s refusal to explicitly choose between continued representation by appointed counsel and self-representation created any ambiguity regarding plaintiff’s desire to unequivocally waive his right to trial counsel, any ambiguity should have been resolved in favor of representation because, consistently with [*People v*] *Adkins* [(*After Remand*), 452 Mich 702 (1996)] and United States Supreme Court precedent, courts *must* indulge every reasonable presumption against the waiver of the right to counsel [footnotes omitted].” *Russell, supra*, ___ Mich at ____.

Add the following case summary before Section 3.13 near the top of page 21:

A defendant may make an unequivocal, knowing, intelligent, and voluntary waiver of his right to counsel even though the defendant’s request to represent himself was prompted by his dissatisfaction with his counsel’s cross-examination of two prosecution witnesses and the trial court denied the defendant’s request to recall the witnesses so that he could question them. *People v Williams*, ___ Mich ___ (2004).

During the trial in *Williams*, the defendant expressed his desire to represent himself and asked to be permitted to question two witnesses who had already been excused. After the trial court clearly advised the defendant that the witnesses would not be recalled and he would not have the opportunity to

question them, the defendant stated that he still wished to proceed with self-representation. The defendant then asserted that the witnesses' testimony at his preliminary examination would rebut the unfavorable testimony given by the witnesses at trial and asked to have their preliminary examination testimony read at trial. The court denied this request and the defendant's subsequent request to be allowed time to review the preliminary examination transcript himself. Despite the trial court's denial of all his requests, the defendant again expressed an unequivocal desire to represent himself and waive counsel. *Williams, supra*, ___ Mich at ___. According to the Court, "Defendant's unrealistic 'hopes of introducing evidence' in contravention of the court's explicit ruling do not render invalid defendant's unequivocal invocation of his right to self-representation." *Williams, supra*, ___ Mich at ___.

The trial court further complied with the requirements of MCR 6.005 by establishing a record of the defendant's knowing, intelligent, and voluntary waiver of the right to counsel. The trial court determined that the defendant understood the charges against him, was aware of any mandatory minimum sentences associated with conviction of the charges, and knew of the maximum sentences possible for conviction of the charges. The trial court further advised the defendant of the risks involved in his decision to represent himself and again the defendant expressed an unequivocal desire to waive his right to counsel and proceed in propria persona. *Williams, supra*, ___ Mich at ___.

The *Williams* Court acknowledged the circumstances under which the defendant initiated his waiver but noted the defendant's consistent affirmation of this decision in light of the trial court's rulings:

"Although defendant appeared to condition his initial waiver of counsel on the trial court's agreement to allow him to recall and cross-examine two excused witnesses, he subsequently made an intelligent, knowing, and voluntary waiver of his right to counsel after the trial court rejected defendant's request to recall and cross-examine the witnesses." *Williams, supra*, ___ Mich at ___.

3.14 Pretrial Release

Replace the quoted portion of MCL 765.6(1) in the middle of page 23 with the following:

“Except as otherwise provided by law, a person accused of a criminal offense is entitled to bail. The amount of bail shall not be excessive. The court in fixing the amount of the bail shall consider and make findings on the record as to each of the following:

“(a) The seriousness of the offense charged.

“(b) The protection of the public.

“(c) The previous criminal record and the dangerousness of the person accused.

“(d) The probability or improbability of the person accused appearing at the trial of the cause.”

Effective June 24, 2004, 2004 PA 167 eliminated language in MCL 765.6(1) requiring that bail “be uniform whether the bail bond is executed by the person for whom bail has been set or by a surety.” 2004 PA 167 added the following provision to MCL 765.6:

“(2) If the court fixes a bail amount under subsection (1) and allows for the posting of a 10% deposit bond, the person accused may post bail by a surety bond in an amount equal to 1/4 of the full bail amount fixed under subsection (1) and executed by a surety approved by the court.”

August 2004

Update: Criminal Procedure Monograph 4—Felony Arraignments in District Court (Revised Edition)

Part A—Commentary on Felony Arraignments

4.12 Waiver of Rights

B. Right to Counsel

Insert the following text in the paragraph near the middle of page 17 before the paragraph beginning “**Record of continuing waiver**”:

See also *People v Williams*, ___ Mich ___ (2004), and *People v Russell*, ___ Mich ___ (2004).*

*See Section 3.12, *Criminal Procedure Monograph 3: Misdemeanor Arraignments & Pleas (Revised Edition)* (MJl, 2004), for detailed discussion.

4.14 Pretrial Release Determination

D. Record Requirements

Replace the quoted portion of MCL 765.6(1) in the middle of page 22 with the following:

“Except as otherwise provided by law, a person accused of a criminal offense is entitled to bail. The amount of bail shall not be excessive. The court in fixing the amount of the bail shall consider and make findings on the record as to each of the following:

“(a) The seriousness of the offense charged.

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Update: Criminal Procedure Monograph 5—Preliminary Examinations (Revised Edition)

Part A—Commentary

5.13 Waiver of Right to Counsel

Insert the following case summary before the last paragraph on page 19:

A defendant's refusal to cooperate with his appointed counsel and his unequivocal request to be provided with a different defense attorney at trial does not constitute a waiver of counsel or operate as the defendant's request to proceed in propria persona where the record shows that "[the] defendant clearly and unequivocally declined self-representation." *People v Russell*, ___ Mich ___, ___ (2004).

In *Russell*, the defendant informed the trial court at the beginning of trial that he wanted the trial court to appoint a substitute for the defendant's *second* court-appointed attorney. The court refused to appoint different counsel unless the defendant offered "some valid reason" other than "personality difficulties" to justify the appointment of a third defense attorney. The defendant failed to provide any such explanation, and the court explained to the defendant his options: (1) the defendant could retain the counsel of his choice; (2) the defendant could continue with the present attorney's representation; (3) the defendant could represent himself without any legal assistance; or (4) the defendant could represent himself with the assistance of his present attorney. The defendant continued to express his dissatisfaction with his present attorney's defense at the same time that he clearly indicated that he did not wish to conduct his own defense, that he "needed" to be provided with "competent counsel." *Russell, supra*, ___ Mich at ___.

The *Russell* Court reaffirmed the "requirements regarding the judicial inquest necessary to effectuate a valid waiver and permit a defendant to represent himself" as set forth in *Faretta v California*, 422 US 806 (1975), and first adopted by the Michigan Supreme Court in *People v Anderson*, 398 Mich 361 (1976). *Russell, supra*, ___ Mich at ___ n 22. Applying those requirements to the facts in *Russell*, the Court concluded:

“In this case, a review of the record indicates two key facts: first, that defendant expressly rejected self-representation and, second, that defendant never voluntarily waived his Sixth Amendment right to the assistance of counsel at trial. Indeed, defendant clearly sought appointment of *another* trial counsel, and defendant and the trial court engaged in a lengthy dialogue over defendant’s desire to have substitute counsel appointed.

“While defendant was given clear choices, defendant consistently denied that *his* choice was self-representation. Throughout his colloquy with the trial court, defendant steadfastly rejected the option of proceeding to trial without the assistance of counsel. Therefore, it cannot be said, as the Court of Appeals and dissenting opinions maintain, that defendant *unequivocally* chose self-representation and voluntarily waived his Sixth Amendment right to counsel.

“We believe that defendant’s repudiation of self-representation was unmistakable in this case. However, to the degree that defendant’s refusal to explicitly choose between continued representation by appointed counsel and self-representation created any ambiguity regarding plaintiff’s desire to unequivocally waive his right to trial counsel, any ambiguity should have been resolved in favor of representation because, consistently with [*People v*] *Adkins* [(*After Remand*), 452 Mich 702 (1996)] and United States Supreme Court precedent, courts *must* indulge every reasonable presumption against the waiver of the right to counsel [footnotes omitted].” *Russell, supra*, ___ Mich at ____.

Insert the following case summary after the last paragraph on page 19:

A defendant may make an unequivocal, knowing, intelligent, and voluntary waiver of his right to counsel even though the defendant’s request to represent himself was prompted by his dissatisfaction with his counsel’s cross-examination of two prosecution witnesses and the trial court denied the defendant’s request to recall the witnesses so that he could question them. *People v Williams*, ___ Mich ___ (2004).

During the trial in *Williams*, the defendant expressed his desire to represent himself and asked to be permitted to question two witnesses who had already been excused. After the trial court clearly advised the defendant that the witnesses would not be recalled and he would not have the opportunity to question them, the defendant stated that he still wished to proceed with self-representation. The defendant then asserted that the witnesses’ testimony at his preliminary examination would rebut the unfavorable testimony given by the witnesses at trial and asked to have their preliminary examination

testimony read at trial. The court denied this request and the defendant's subsequent request to be allowed time to review the preliminary examination transcript himself. Despite the trial court's denial of all his requests, the defendant again expressed an unequivocal desire to represent himself and waive counsel. *Williams, supra*, ___ Mich at ___. According to the Court, "Defendant's unrealistic 'hopes of introducing evidence' in contravention of the court's explicit ruling do not render invalid defendant's unequivocal invocation of his right to self-representation." *Williams, supra*, ___ Mich at ___.

The trial court further complied with the requirements of MCR 6.005 by establishing a record of the defendant's knowing, intelligent, and voluntary waiver of the right to counsel. The trial court determined that the defendant understood the charges against him, was aware of any mandatory minimum sentences associated with conviction of the charges, and knew of the maximum sentences possible for conviction of the charges. The trial court further advised the defendant of the risks involved in his decision to represent himself and again the defendant expressed an unequivocal desire to waive his right to counsel and proceed in propria persona. *Williams, supra*, ___ Mich at ___.

The *Williams* Court acknowledged the circumstances under which the defendant initiated his waiver but noted the defendant's consistent affirmation of this decision in light of the trial court's rulings:

"Although defendant appeared to condition his initial waiver of counsel on the trial court's agreement to allow him to recall and cross-examine two excused witnesses, he subsequently made an intelligent, knowing, and voluntary waiver of his right to counsel after the trial court rejected defendant's request to recall and cross-examine the witnesses." *Williams, supra*, ___ Mich at ___.